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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/020,693

12/14/2001

Karla M. Robotti

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AGILENT TECHNOLOGIES, INC.
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EXAMINER

GORDON, BRIAN R

ART UNIT

PAPER NUMBER

1743

MAIL DATE

DELIVERY MODE

03/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/020,693

Applicant(s)

ROBOTTI ET AL.

Examiner

Brian R. Gordon

Art Unit

1743

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 51, 70, 75 and 76.
Claim(s) rejected: 37-43, 46-47, 49-50, 52-69, and 71-74, 77.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

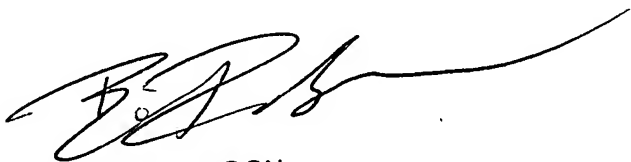
8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Brian R Gordon
Primary Examiner
Art Unit: 1743

Continuation of 11. does NOT place the application in condition for allowance because: The Applicants contend that it is inconsistent to argue that the same "fluid flow path" is defined as one entity in a first instance and a completely different entity in a second instance. Hence, the Applicants contend that the fluid flow path must either be 1) the path defined by the passage formed by the pores of the first polymer membrane; or 2) the fluid flow path must be the flow path between the left and right hand compartments of the battery en masse. If the former, then Takauchi is deficient because it does not teach a high surface area component that is in a fluid flow path. If the latter, then Takauchi is deficient because Takauchi does not teach a microfluidic device. In either case, Takauchi does not teach every element of the rejected claims. It should be noted that the examiner has provided different interpretations to show the different approaches to how the limitations of the claim may be broadly addressed. Applicant claim places no limitation on to what exact structure defines a fluid flow path. For example the term "fluid flow path" in terms of the prior art is not simply limited to the just the membrane or the pores/passages individually. For example, when liquid that flows from a domestic sink, through respective, pipes, valving or anyother structure to a final destination of public sewer system. All the elements collectively can be considered the fluid flow path or and individual element of the entire system also defines a fluid flow path. Any structure which defines an area which the liquid flows is the flow path. The liquid in the prior art flows for the left side through the membrane (when considered in detail through passage/pores of the membrane). The polymers are attached to the membrane, walls of the pores. Applicant further asserts the device cannot be considered as a microfluidic device for the membrane as a whole is configured to allow a large quantity of ions to flow from one compartment to the other compartment. The term "large" is relative. One can have a quantity of a micro-volume and one may still label it as being "large". Furthermore applicant has failed to provide support for such assertion of the membrane not functioning to manipulate microvolumes of liquid. As previously stated . the membrane of the battery is disclosed as comprising fine, micropores. The micropores define fluid paths. The micropores are disclosed as having diameters in the range of .05-10 (Mu)m (column 10, claim 6). As such the pores manipulate micro-volumes as required. As such the membrane and battery itself meets the standard of the definition provided by applicant .



BRIAN R. GORDON
PRIMARY EXAMINER